

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA, STATE OF
COLORADO, STATE OF
CONNECTICUT, STATE OF
DELAWARE, STATE OF FLORIDA,
STATE OF GEORGIA, STATE OF
HAWAII, STATE OF ILLINOIS, STATE
OF INDIANA, STATE OF IOWA,
STATE OF LOUISIANA,
COMMONWEALTH OF
MASSACHUSETTS, STATE OF
MICHIGAN, STATE OF MINNESOTA,
STATE OF MONTANA, STATE OF
NEVADA, STATE OF NEW
HAMPSHIRE, STATE OF NEW
JERSEY, STATE OF NEW MEXICO,
STATE OF NORTH CAROLINA,
STATE OF OKLAHOMA, STATE OF
RHODE ISLAND, STATE OF
TENNESSEE, STATE OF TEXAS,
COMMONWEALTH OF VIRGINIA,
STATE OF WASHINGTON, *ex rel.*

LENA STURGEON, ANTHONY
FERRANTE, ANTHONY SCIOLE AND
NATHAN NILES,

Plaintiffs,

v.

PHARMERICA CORPORATION,

Defendant.

Civil Action No. 2:15-6829-CMR

**[CORRECTED] JOINT MOTION FOR ENTRY OF
[PROPOSED] AMENDED SCHEDULING ORDER**

Relators, Lena Sturgeon, Anthony Ferrante, Anthony Sciole, and Nathan Niles

(“Relators”), and Defendant, PharMerica Corporation (“PharMerica”) (each a “Party” and

together the “Parties”), by and through their respective counsel, respectfully request the entry of the [Proposed] Amended Scheduling Order filed simultaneously with this Corrected Joint Motion. As grounds for this Motion, the Parties aver as follows:

1. On December 28, 2015, Relators initiated an action on behalf of the United States of America and various named states against PharMerica Corporation under the False Claims Act, 31 U.S.C. § 3729, *et seq.* (“FCA”) and various State law corollaries.

2. On May 31, 2019, Relators filed their Amended Complaint (ECF No. 43) alleging claims under §§ 3729(a)(1)(A) and 3729(a)(1)(B) of the FCA, as well as reverse FCA claims under § 3729(a)(1)(G).

3. On July 22, 2019, PharMerica filed a Motion to Dismiss Relators’ First Amended Complaint. (ECF No. 51) Briefing on that Motion closed on October 11, 2019. (ECF Nos. 57, 59, 62)

4. On December 18, 2019, the Court entered a Scheduling Order governing this case (ECF No. 76).¹

5. On February 5, 2020, the Court entered an Order granting in part and denying in part PharMerica’s Motion to Dismiss. (ECF No. 87).

6. For more than two years, the Parties have cooperated diligently on discovery in this action. The volume of discovery for both Relators and PharMerica is extensive, requiring the collection, processing, and review of several terabytes of electronically-stored information by each Party using negotiated search terms and Technology Assisted Review programs.

¹ The schedule in this case has been amended for good cause four times making this the fifth request for an extension.

7. To date, the parties have cumulatively produced over 2 million documents and terabytes of data.

8. On June 23, 2021, the Court entered an order appointing Dennis M. Cavanaugh as Special Master (ECF. No. 120).

9. On January 10, 2022, the Parties reported to the Court that they had substantially completed their document productions but that additional time was needed for document third party document discovery and discovery related to a national sampling protocol.

10. On January 11, 2022, pursuant to the Parties' request, the Court granted an extension of the document discovery deadline for purposes of third party document discovery and discovery related to a national sample. (ECF No. 135).

11. After initially being unable to reach agreement on a Sampling Protocol, following a meeting with Special Master Cavanaugh on April 15, 2022, the parties came to an agreement on May 12, 2022, on a Stipulated Sampling Protocol and [Proposed] Order, which the Special Master granted on the same day.

12. Almost immediately thereafter, PharMerica had difficulty meeting certain deadlines with respect to providing information required in the Sampling Protocol. The parties attempted to reach agreement on a revised schedule that would have preserved the schedule outlined in the Protocol.

13. On July 5, 2022, Relators provided a written update to the Special Master outlining difficulties scheduling certain noticed depositions and the technical difficulties concerning PharMerica's production of certain key information necessary for selecting the national sample. At that time, Relators reserved their rights to seek an amended discovery order and Sampling Order if the difficulties persisted.

14. On August 12, 2022, Relators informed the Special Master that his assistance would be necessary to resolve the issues outline herein. The parties agree that the Sampling Order dated May 12, 2022, requires modification and are currently working through the outstanding issues with the Special Master.

15. Moreover, in mid-July 2022, PharMerica retained additional counsel to represent former employees, and the newly retained firm has requested additional time.

16. Given these circumstances, additional time is required to complete discovery.

17. Accordingly, the Parties have drafted and seek entry of an Amended Scheduling Order, which extends the deadlines by 90 days, as follows:

- a) Fact depositions shall be completed on or before January 17, 2023.
- b) Fact discovery shall be completed on January 30, 2023.
- c) The national sampling shall be completed by April 7, 2023.
- d) The parties shall exchange affirmative expert reports on or before June 23, 2023.
- e) The parties shall exchange rebuttal expert reports on or before August 18, 2023.
- f) Expert discovery shall be completed on or before October 13, 2023.
- g) Any Daubert motions or motions for summary judgment shall be filed on or before January 5, 2024. Judge Rufe's Policies and Procedures for Summary Judgment will not apply in this case and the parties should instead follow Federal Rule of Civil Procedure 56.
- h) Oppositions to any Daubert motions or motions for summary judgment or shall be filed on or before March 8, 2024.
- i) Replies to oppositions to any Daubert motions or motions for summary judgment shall be filed on or before March 29, 2024.

18. The Special Master has reviewed and approved the Parties' proposed Amended Scheduling Order.

19. No Party will be prejudiced by the grant of the Amended Scheduling Order.

For the foregoing reasons, the Parties jointly request that this Court enter the Amended Scheduling Order.

Dated: September 19, 2022

PHARMERICA CORPORATION,

By its attorneys,

/s/ Michael Manthei

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Respectfully submitted,

LENA STURGEON, ANTHONY
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By their attorneys,

/s/ Catherine Pratsinakis

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CERTIFICATE OF SERVICE

I, Catherine Pratsinakis, hereby certify that a true and correct copy of the foregoing has been electronically filed and served this 19th day of September 2022 upon all counsel of record via the Court's CM/ECF System.

/s/ Catherine Pratsinakis
Catherine Pratsinakis

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Civil Action No. 15-6829-CMR

[PROPOSED] AMENDED SCHEDULING ORDER

In light of the Parties' Joint Motion for Entry of [Proposed] Amended Scheduling Order, and
for good cause shown, it is ORDERED as follows:

1. Fact depositions shall be completed on or before January 17, 2023.
2. The national sampling shall be completed by April 7, 2023.

3. The parties shall exchange affirmative expert reports on or before June 23, 2023.
4. The parties shall exchange rebuttal expert reports on or before August 18, 2023.
5. Expert discovery shall be completed on or before October 13, 2023.
6. Any Daubert motions or motions for summary judgment shall be filed on or before January 5, 2024. Judge Rufe's Policies and Procedures for Summary Judgment will not apply in this case and the parties should instead follow Federal Rule of Civil Procedure 56.
7. Oppositions to any Daubert motions or motions for summary judgment shall be filed on or before March 8, 2024.
8. Replies to oppositions to any Daubert motions or motions for summary judgment shall be filed on or before March 29, 2024.

IT IS SO ORDERED.

Dated: _____

Hon. Cynthia M. Rufe